THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ACCU-SPEC ELECTRONIC SERVICES, INC.	:	
	:	
Plaintiff,	:	
	:	**C.A. NO.: 03-394 E**
v.	:	
	:	
CENTRAL TRANSPORT INTERNATIONAL, INC. and LOGISTICS PLUS, INC.	:	
	:	
Defendants.	:	

MEMORANDUM OF LAW IN SUPPORT OF CENTRAL TRANSPORT INTERNATIONAL, INC.'S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

The Complaint in this matter filed by plaintiff Accu-Spec Electronic Services, Inc. ("Accu-Spec") seeks to recover for damage allegedly sustained to an X-ray machine while being transported between California and Pennsylvania. Plaintiff's claim is based on provisions of the Carmack Amendment, 49 U.S.C. § 14706. The Carmack Amendment sets forth the exclusive procedures and liabilities for freight loss and damage claims arising from the interstate transportation of freight. The Carmack Amendment also specifically delineates who is entitled to bring suit for such damage or loss, and specifically who can be sued for such damage or loss.

In January of 2003, Accu-Spec engaged Logistics Plus, a freight forwarder, to deliver a crate containing an X-ray machine from Fremont, California to Accu-Spec's facility in McKean, Pennsylvania. Logistics Plus issued a rate to Accu-Spec for transportation of the freight. Logistics Plus issued its own bill of lading which governed the terms of the shipment from origin

EXHIBIT
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to its destination. Logistics Plus in turn entered into a separate contract with Central Transport to physically pick up and deliver the freight. Central Transport had absolutely no contact with Accu-Spec whatsoever in arranging to transport the freight. All communications with Accu-Spec to make arrangements for transportation of the freight were solely with representatives of Logistics Plus. Subsequent to delivery of the crate containing the X-ray machine, Accu-Spec notified Logistics Plus of damage to the freight.

As is evident from the transportation arrangements in this case, freight transportation services are growing more complex, involving more than just a shipper and a carrier. Many times a third party is involved in addition to the carrier actually hauling the freight. In this case, Logistics Plus held itself out as, and acted as, a freight forwarder.

The Carmack Amendment provides for specific treatment of freight forwarders when determining which party can be liable to a shipper for a damage or loss claim. Absent the involvement of a freight forwarder, the statute provides that a claim for damage or loss can be brought against the carrier issuing a bill of lading or the carrier delivering the property. Simply put, these are the only two entities against which a valid claim can be brought. However, when a freight forwarder is involved in the transportation of freight, the statute plainly states that the freight forwarder is considered both the receiving and delivering carrier. Because Logistics Plus is a freight forwarder and has issued its own bill of lading, it effectively stands in the shoes of both the receiving and the delivering carrier. It is the only entity against which a claimant such as Accu-Spec can bring a claim or cause of action. In turn, the law permits Logistics Plus to[1]

[1] For these reasons, Accu-Spec lacks standing as a matter of law to pursue its claim against Central Transport, and summary judgment must be granted in favor of Central Transport as to the claims asserted against it by Accu-Spec.

49 of the United States Code. Since in the ordinary course of its business, Logistics Plus performs all of the functions set forth in the definition of freight forwarder at 49 U.S.C. § 13102(8), it not only holds itself out as a freight forwarder, it functions as a freight forwarder as well.

III. ACCU-SPEC'S CLAIM BASED ON 49 U.S.C.§ 14704 IS FRIVOLOUS

A. Accu-Spec's Claim Based On 49 U.S.C. § 14704 Has No Legal or Factual Basis

Rule 11 of the Federal Rules of Civil Procedure requires claims, defenses, or other legal contentions to be warranted by existing law or by non-frivolous argument for the extension, modification or reversal of existing law or the establishment of new law. The allegations must have evidentiary support or likelihood of evidentiary support after a reasonable opportunity for investigation of discovery. F.R.C.P. 11(b). Plaintiff's claims based on 49 U.S.C. § 14704 are neither warranted by existing law or any argument for the extension of the law and don't have evidentiary support. For these reasons, these claims are frivolous and should be stricken.

49 U.S.C. § 14704 provides for remedies if a carrier or broker fails to obey an order of the Secretary of Transportation ("Secretary") or the Surface Transportation Board ("Board"). This remedy must be directed through the Attorney General on request of either the Secretary or the Board, 49 U.S.C. § 14703. Section 14704 provides a very narrow avenue to bring a civil action against a carrier or broker. Only one District Court has ever interpreted this section as providing for any private right to bring a cause of action. This language is found in the last sentence in 49 U.S.C. § 14704(a)(1). This sentence reads "A person may bring a civil action for injunctive relief for violations of Sections 14102 and 14103."

Even if a private cause of action exists, the two sections which it relates to have absolutely nothing to do with the facts of this case. Section 14102 specifically addresses the leasing of motor vehicles and § 14103 relates to the loading and unloading of motor vehicles. The topics of both of these sections have absolutely nothing to do with plaintiff's basis for a cause of action related to Accu-Spec's amended claim. This claim is so baseless that the expense of defending this claim should be chargeable against Accu-Spec.

B. Statutory Interpretation

Under any evaluation of 49 U.S.C. § 14704 there is no arguable claim against Central. When there is a question of statutory interpretation, a court begins with the language of the statute itself. In re United Healthcare System, Inc., 200 F.3d 170, 176 (3d Cir. 1999). The first determination is whether the language has a plain and unambiguous meaning with regard to the particular dispute. Michael C. v. Radnor Township School District, 202 F.3d 642, 648 (3d Cir. 2000). Plaintiff suggests that it is entitled to assert a cause of action pursuant to § 14704 despite the plain reading of the language of the statute which in no way relates to the substance of any of the claims in this case.

Accepting plaintiff's argument would effectively ignore that Title 49 provides for a specific well defined and universally accepted regimen for freight claims under 49 U.S.C. § 14706. Congress has specifically provided for this section to address the claims which are the subject of this litigation and based on the plain language never intended for these types of claims to be addressed in § 14704. Interpretation of a statute must give effect, if possible, to every word and cause of a statute. Alexander v. Riga, 208 F.3d 419, 430 (3d Cir. 2000). Statutory interpretations which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available. First Merchants Acceptance Corp. v. J.C. Bradford & Co., 198 F.3d 394, 402 (3d Cir. 1999). Not only would an analysis consistent with plaintiff's ignore the plain reading of the statute selected for its cause of action, it would also nullify the section of the statute which actually provides for a cause of action, in this case against Logistics Plus as the freight forwarder.

C. Central Transport Did Not Violate Any Provision Of The Code Of Federal Regulations

Plaintiff's claim pursuant to Section 14704 also has no evidentiary support. Plaintiff admits that Central did in fact respond to plaintiff's claim in a timely manner. The claim was subsequently "amended" to reflect more accurate dollar values arising out of the same incident. This in no way was a new claim as it arose out of the same incident and had previously been rejected. These facts are undisputed. Plaintiff's claim based on 49 U.S.C. § 14704 is frivolous, legally unsupportable and does not contain any evidentiary support. For these reasons, this claim should be dismissed as a matter of law.